

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 29, 2018 appellant, then a 51-year-old contract specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained a stress-related condition due to learning that, on or around July 15, 2013, he had been involuntarily reassigned to another position. He indicated that he first became aware of his condition and of its relationship to his federal employment on July 15, 2013. Appellant maintained that his issues were "continuous."

In a November 11, 2018 statement, appellant asserted that on approximately July 15, 2013 he learned that management had reassigned him from a position as a management analyst to a position as a contract specialist and had transferred him to a work location.³ He maintained that he had immediately experienced extreme stress and that "such issues continue to this very day." Appellant advised that he had missed work intermittently from July 18, 2013 through November 15, 2015 due to stress, which was related to his involuntary reassignment.

In a development letter dated January 2, 2019, OWCP informed appellant of the deficiencies of his claim, noting that it did not appear that his claim was timely filed. It advised him of the type of medical and factual evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations.

In a January 24, 2019 response, appellant again related that he had experienced stress after learning on July 15, 2013 of his involuntary reassignment. He related, "I was written out of work by a medical doctor from July 18 through August 31, 2013 due to the aforementioned issues surrounding my forcible reassignment and the stress[-]related issues I was and [am] currently experiencing." Appellant advised that his stress-related issues continued.⁴ He noted that he had been diagnosed with anxiety disorder, benign hypertension, gastroesophageal reflux disease (GERD)/acid reflux, allergic rhinitis, erythrocytosis, insomnia, migraines/vascular headache, and obstructive sleep apnea.

By decision dated February 27, 2019, OWCP denied appellant's occupational disease claim. It found that as he had first become aware of the relationship between his condition and his federal employment on July 15, 2013, but did not file a claim until February 27, 2019, the claim was untimely under 5 U.S.C. § 8122(a).

² Docket No. 19-1345 (issued January 28, 2020).

³ Appellant additionally contended that he had sustained physical injuries on various dates. OWCP adjudicated the issue of whether he had sustained an orthopedic condition under a separate OWCP file, File No. xxxxxx307.

⁴ Appellant again described various physical injuries sustained from September 10, 2013 until July 20, 2018.

On March 11, 2019 appellant requested reconsideration. He asserted that he continued to experience stress related to his reassignment from his position as a management analyst to a position as a contract specialist.

By decision dated May 28, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated January 28, 2020, the Board set aside the February 27 and May 28, 2019 OWCP decisions.⁵ It found that appellant's claim was timely filed under section 8122(a) as he had attributed his condition to stress, continuing to the present day. The Board remanded the case for OWCP to adjudicate the merits of the emotional condition claim.

In a development letter dated March 12, 2020, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded the employing establishment 30 days to submit the requested information.

In a response dated March 12, 2020, the employing establishment advised that appellant's supervisor from 2013 had retired from employment and the new supervisor "has no idea what took place."

By decision dated June 24, 2020, OWCP denied appellant's emotional condition claim. It found that he had not established that reassignment to a contract specialist position from a management analyst position constituted a compensable employment factor. OWCP concluded, therefore, that the requirements had not been met to establish an emotional condition "that arose during the course of employment and within the scope of compensable work factors as defined by the FECA."

On July 6, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated October 19, 2020, OWCP's hearing representative affirmed the June 24, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim,⁷ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she

⁵ *Supra* note 2.

⁶ *Supra* note 1.

⁷ *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

claims compensation is causally related to that employment injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁹

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.¹⁰

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.¹¹ However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.¹²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹³ Where, however, the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may

⁸ *S.S., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ 20 C.F.R. § 10.115; *R.S.*, Docket No. 20-1307 (issued June 29, 2012); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹¹ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹² *Lillian Cutler, id.*

¹³ *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁴ *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

not be considered.¹⁵ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a stress-related condition in the performance of duty.

Appellant has not attributed his condition to the performance of his regularly or specially assigned duties under *Cutler*.¹⁷ Instead, he maintained that he experienced stress due to administrative actions by the employing establishment in transferring him in July 2013 to a different position at a new location. In *Thomas D. McEuen*,¹⁸ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, such action will be considered a compensable employment factor.¹⁹

Appellant asserted that he experienced stress after being involuntarily reassigned in July 2013 from a position as a management analyst to a position as a contract specialist and transferred to a new work location. However, the Board has held that emotional conditions resulting from an involuntary transfer are not compensable.²⁰ Appellant has not submitted any corroborating evidence to establish error or abuse by management in its administrative action of transferring him to a different position at a new location and, thus, has not established a compensable employment factor.²¹ Therefore, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁵ See *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

¹⁶ *Id.*

¹⁷ *Supra* note 7.

¹⁸ See *Thomas D. McEuen*, *supra* note 13.

¹⁹ *M.B.*, Docket No. 20-1160 (issued April 2, 2021); *William H. Fortner*, 49 ECAB 324 (1998).

²⁰ *Andrew J. Sheppard*, 53 ECAB 170 (2001).

²¹ See *D.R.*, Docket No. 16-0605 (issued October 17, 2016).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a stress-related condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board